

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERMA TODAK,

Plaintiff,

vs.

UNIONTOWN HOSPITAL,

Defendant.

Case No. 2:21-CV-

CIVIL COMPLAINT

J.

COMPLAINT IN CIVIL ACTION

AND NOW comes the Plaintiff, by and through her trial attorney, Erik M. Yurkovich, Esq., who files this Civil Complaint pursuant based upon the following.

I. PARTIES

1. The Plaintiff is Erma Todak (“Todak”), former employee of Defendant, who resides at 267 Haddenville Road, Uniontown, Pennsylvania 15401.
2. The Defendant is Uniontown Hospital (“The Hospital”), former employer of Plaintiff, located at 500 West Berkeley Street, Uniontown, Pennsylvania 15401.

II. JURISDICTION

3. This case is brought pursuant to The Americans with The Age Discrimination in Employment Act of 1969, as amended, 29 U.S.C. § 621, et seq. (“ADEA”).

III. FACTS

4. Erma Todak is an adult female, over the age of fifty-six (56), and current employee of The Hospital.
5. Todak remains employed as the sole pre-admission nurse for surgeries.

6. Todak began working for Uniontown Hospital in 1994 as registered nurse.
7. Todak is a highly experience nurse and for over thirty-four (34) years, she has gained medical-surgical, cardiac step-down, operating room, same day surgery, physician's office and pre-admission experience.
8. Todak has a bachelor's degree from Penn State and has chart review and basic coding experience.
9. On or about October 29, 2020, Todak applied for a "clinical documentation specialist" position ("the position").
10. Todak's initial interview with the Director of Medical Records, Karen Kenistin ("Kenistin"), originally scheduled for October 29, 2020, was cancelled due to an increase of COVID-19 cases.
11. On or about January 1, 2021, West Virginia University ("WVU") purchased the hospital.
12. Todak followed up with Kenistin on February 4, 2021, and Kenistin informed Todak that the position was revised and reposted and Todak remained "qualified."
13. Todak reapplied and was interviewed by Kenistin on or about March 2, 2021.
14. Kenistin represented that she wanted to fill the position right away and the decision would be made by the end of the week.
15. Todak did not hear anything and followed up on March 9, 2021, and March 17, 2021.
16. Kenistin told Todak that Human Resources Representative, JoAnn Kaminsky ("Kaminsky") was experiencing a "hold up" with WVU.
17. On or about March 18, 2021, Kaminsky notified Todak that she did not get the position.

18. Emily Lucky (“Lucky”), a substantially younger female in her early 30’s, with substantially less nursing experience than Todak got the position.
19. Lucky graduated from Westmoreland Community College in 2018, was a hospice nurse for less than two (2) years and was employed by Uniontown Hospital for approximately one (1) year.
20. Todak complained to Director, Linda Kunkle (“Kunkle”) about hiring Lucky and requested an explanation.
21. Kenistin responded that the decision was about “experience.”
22. The offered reason is a pretext for age discrimination because Todak has over thirty (30) more years of experience than Lucky.
23. Plaintiff exhausted her administrative remedies, filed a charge of discrimination with the E.E.O.C., Charge Number 533-2021-1322, received a neutral dismissal letter on September 17, 2021, and files this complaint timely.
24. During the E.E.O.C. process, Defendant stated that Lucky’s recent Intensive Care Unit (“ICU”) experience was the determinative factor in the decision to hire her.
25. The offered reason in support of not hiring Plaintiff is a pretext for age discrimination because ICU experience was not listed on the job description nor was Todak asked about her ICU experience during her interview.

IV. AGE DISCRIMINATION IN EMPLOYMENT

(The Age Discrimination in Employment Act of 1969, 29 U.S.C. § 621, et seq.)

26. Todak repeats all prior allegations herein.
27. Todak is over the age of forty (40).
28. Todak suffered an adverse employment action.

29. Todak was qualified for the position sought.

30. A substantially younger person with substantially less experience was hired instead of Plaintiff.

WHEREFORE Plaintiff prays for a judgment against the Defendant in her favor and an award for all available relief, damages, costs, fees and attorney fees.

JURY TRIAL DEMANDED

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Erik M. Yurkovich', with a large, stylized initial 'E' and a long, sweeping horizontal stroke at the end.

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